

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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Application of :
R. TIMOTHY EADES : DECLARATORY RULING
Petitioner, : DEC 27-22
for a Declaratory Ruling :
pursuant to §204 of the State :
Administrative Procedure Act and :
Part 619 of Title 6 of the :
Official Compilation of Codes, :
Rules and Regulations of the :
State of New York :

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R. Timothy Eades, Esq., an attorney having as clients several tavern owners who sell beer for off-premises consumption, has petitioned for a Declaratory Ruling on the question of whether his clients are dealers entitled to receive handling fees from distributors under the New York State Returnable Container Act, Environmental Conservation Law ("ECL") Article 27, Title 10, and its implementing regulations, 6 NYCRR Part 367, for the empty beverage containers which the dealers have accepted for redemption.

The question under review presents a case of first impression that has significant statewide impacts. Accordingly, it is in the public interest to grant the petition and to issue a Declaratory Ruling.

Beer is a "beverage" covered by the Returnable Container Act if it is contained in a "beverage container."

ECL §27-1003(1). A "beverage container" is a "glass, metal, aluminum, steel or plastic bottle, can or jar [of] one gallon or 3.8 liters or less." ECL §27-1003(2).

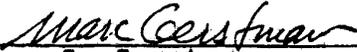
A dealer (as well as an operator of a redemption center) is entitled to receive a handling fee of 1.5 cents from the distributor for each beverage container which the dealer accepts for redemption. ECL §27-1007(3). A dealer is "a person who engages in the sale of beverages in beverage containers for off premises consumption." ECL §27-1003(4).

While a person who sells beverages in beverage containers for on-premises consumption only is not a dealer, a person who engages in any sales of beverages in beverage containers for off-premises consumption becomes a dealer for purposes of the Returnable Container Act. 6 NYCRR §367.4(a); emphasis added. Consequently, a tavern owner who sells some beer in beverage containers for off-premises consumption is a dealer.

By law a distributor must accept from a dealer any empty beverage container of the design, shape, size, color, composition and brand sold by the distributor, ECL §27-1007(2), even if the container is corroded or dismembered, or if it contains foreign material, provided that the dealer has paid the refund value for such container. ECL §27-1009(2). For each container so accepted, the distributor is obligated to pay to the dealer the five cents refund value, ECL §27-1007(2), and an additional handling fee

of 1.5 cents. ECL §27-1007(3). Distributors must, therefore, pay to tavern owners who sell beer in beverage containers for off-premises consumption both the refund value and the handling fee.

Dated: Albany, New York
April // , 1989



Marc S. Gerstman
Deputy Commissioner and
General Counsel